



Written statement  
before the

Subcommittee on Financial Institutions and Consumer Credit  
Committee on Financial Services Committee  
United States House of Representatives

on

**“Credit Cards and Older Americans”**

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Chairwoman Maloney, Rep. Gillibrand and Members of the Subcommittee, on behalf of AARP's 39 million members, thank you for the opportunity to testify on credit card practices. I also want to take this opportunity to thank you and your colleagues for focusing congressional attention on broader consumer credit issues, including subprime lending, predatory lending and bank fees. These practices have a real impact on the financial well-being of so many consumers, including many older Americans, and we appreciate your attention to them.

### **Credit Cards and Older Americans**

Credit cards are more and more a fixture of U.S. economic life. They provide a tremendous convenience for many consumers, including older consumers, who increasingly use credit cards to pay for a range of products and services. Most people do not view credit cards as a form of borrowing, and for consumers who use a credit card simply for convenience and pay off the balance in full each month, the cards generally work well. The main problems occur when a consumer cannot pay off the full amount due and carries forward a balance, truly borrowing, and gets caught in a downward spiral of exorbitant interest rates, fees and penalties, and other billing practices that appear designed simply to wring more fees out of consumers. And, as Professor Porter discusses in her testimony, the marketing practices of credit card issuers also can prove problematic for older Americans.

Today, a growing number of older Americans find themselves deep in credit card debt – or even filing for bankruptcy. Although older households long have been considered among the most frugal and resistant to consumer debt, changing economic conditions -- particularly declining pension and investment income and rising costs for basic expenses such as prescription drugs, health care, and utilities -- have made credit card debt a more serious financial issue for older Americans.

According to a study released in February 2004 by Demos,<sup>1</sup> between 1992 and 2001, Americans over age 65 saw their credit card debt nearly double, on average, from \$2,143 to more than \$4,000. Seniors between the ages of 65 and 69, presumably the newly-retired, saw the most staggering rise in credit card debt – 217 percent – to an average balance of \$5,844.<sup>2</sup> The number of seniors filing for bankruptcy more than tripled during the same time period.<sup>3</sup> Other warning signs also are evident. The proportion of income spent to pay off debts by households headed by individuals 65 to 74 years of age has risen steadily over the past decade.<sup>4</sup> Among seniors with incomes under \$50,000 (which is about 70 percent of all seniors), an estimated one in five

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<sup>1</sup> Demos is a New York-based research and advocacy group and may be found on the Web at [www.demos.org](http://www.demos.org).

<sup>2</sup> Tamara Draut and Heather McGhee, Demos, "Retiring in the Red: The Growth of Debt Among Older Americans," February 2004, available at [http://www.demos.org/pubs/Retiring\\_2ed.pdf](http://www.demos.org/pubs/Retiring_2ed.pdf).

<sup>3</sup> Theresa Sullivan, Deborah Thorne and Elizabeth Warren, "Young, Old and In Between: Who Files for Bankruptcy?" *Norton Bankruptcy Law Advisor*, Iss. No. 9A, September 2001, at 5. The number of older Americans declaring bankruptcy during this period rose from 23,890 to 82,207.

<sup>4</sup> According to the Federal Reserve Survey of Consumer Finances, the median debt services ratio for households aged 65-74 grew by 54 percent from 9.8 percent in 1992 to 15.1 percent in 2001 and debt services ratio for households 75 and older grew 169 percent, from 2.6 percent to 7 percent during the same period.

families with credit card debt is in what is considered “debt hardship,” spending more than 40 percent of their income on debt payments, including mortgage debt.<sup>5</sup>

What is of greatest concern to AARP is not just that older consumers carry more credit card debt than before, but that more seniors are being buried in what may be considered *unaffordable* debt. In a 2006 survey, AARP found that close to half of U.S. adults age 40 or older see their current level of debt as a problem. About 30 percent of retirees in the survey described their debt as a problem and just 7 percent of retirees said they did not have any debt.<sup>6</sup>

### **Creditor Practices**

Today, an estimated three out of every four Americans age 65 and older hold credit cards. For many of these older Americans, the credit card is a great convenience. They can afford to pay their balance in full each month and generally enjoy lower annual percentage rates. These so-called “convenience users” collect airline miles, reward points, and even cash back on their purchases. But, for those who are unable to make more than the required minimum monthly payments on their cards, industry practices often push them into unmanageable credit card debt. Consider just a few examples:

- June Black’s financial problems began when she put charges for a doctor visit, medical tests and prescription drugs on her credit card because she couldn’t pay the full balance of about \$300. Three years later, after a series of fees and finance charges were imposed, Black, 71 was more than \$6,000 in debt. The Riverside, CA woman sold her car, moved to a smaller and cheaper apartment and writes a \$127 check each month to pay off a credit card she long ago cut up. With the 32.24 percent interest rate she is being charged, Ms. Black has little hope of ever climbing out of the debt. “It just keeps spiraling,” Black said of her debt. “I figure I’m going to die before this gets taken care of.”<sup>7</sup>
- In May 1997, Ruth Owens stopped using her credit card, did not make further purchases or take cash advances, and tried to pay off her debt to Discover Bank. At that time, she owed \$1,963. Over the next six years, Ms. Owens made \$3,492 in payments to Discover Bank. One might assume this was enough to pay off her debt. After all, if Ms. Owens had made the same payments on a \$2,000 loan with interest at 21 annual percentage rate, her debt would be paid off. From May 1997 until her account was sent for collection in May 2003, not one penny of Ms. Owens’ \$3,492 in payments went to reduce her debt. During this time, Discover Bank charged Ms. Owens fees that consumed all of her payments and caused her debt to grow even larger. Among the fees and other charges:

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<sup>5</sup> Demos, “Retiring in the Red.”

<sup>6</sup> Hanna Holley, AARP, “Retirement Planning Survey Among U.S. Adults Age 40 and Older,” May 2006, available at [http://www.aarp.org/research/financial/retirementsaving/ret\\_planning.html](http://www.aarp.org/research/financial/retirementsaving/ret_planning.html).

<sup>7</sup> As reported by David Olson, The Press-Enterprise, “More Seniors Struggle with Debt,” June 4, 2007.

Over-limit fees	\$1,518.00
Late fees	\$1,160.00
Credit insurance	\$ 369.62
Interest and other fees	\$6,008.66
<b>TOTAL</b>	<b>\$9,056.28</b>

Despite her payments totaling \$3,492, Discover Bank claimed that Ms. Owens still owed \$5,564 when it filed a collection lawsuit against her in Ohio court. Ms. Owens told the court, in a handwritten statement: “I would like to inform you that I have no money to make payments. I am on Social Security Disability. After paying my monthly utilities, there is no money except a little food money and sometimes it isn’t enough. If my situation was different I would pay. I just don’t have it. I’m sorry.” The judge in this case barred Discover from collecting any more money from Ms. Owens.<sup>8</sup>

- “Alvah” was 79 when he lost his part-time security guard job in the Albuquerque, N.M. mobile home park where he lives. He had been taking in about \$600 monthly for the work, enough to allow him and his wife Doris to stay current with payments on the nine credit cards they had. Doris had been sick and they used their credit cards primarily to pay for prescriptions, doctor visits, and emergency room charges. Alvah and Doris used their \$1,600 in monthly Social Security to cover their living expenses, including the mortgage they still were paying on their 27-year-old mobile home. The nine credit cards – six from one issuer – had about \$15,000 total in charges on them when Alvah lost his security guard job in November 2004. Alvah says he immediately sent a letter to all the lenders saying he couldn’t pay and asking for some relief, to no avail. When he was unable to make the payments, the interest rate on the outstanding balance skyrocketed – in one case from 14 percent to 25 percent in a single month. Added to that were monthly late fees. By January 2006, the original \$15,000 debt had ballooned to nearly \$30,000.<sup>9</sup>

As these examples illustrate, it is the customer who sometimes misses a payment, or sends a payment late, or simply pays the minimum due each month who generates the real profits for credit card companies. In 2005, interest and penalty fee revenues alone added up to a staggering \$79 billion. Nearly 8 out of every 10 dollars of revenue for the credit card companies comes from customers who cannot pay off their bills in full every month.<sup>10</sup> While no one will dispute that credit card companies have every right to earn a profit, AARP is concerned that consumers in the marketplace be treated fairly and that credit card companies not reap huge financial rewards from the very practices that sink consumers into deeper and deeper debt.

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<sup>8</sup> Deanne Loonin, National Consumer Law Center, “The Life and Debt Cycle: The Implications of Rising Credit Debt Among Older Consumers,” July 2006.

<sup>9</sup> *Id.*

<sup>10</sup> Elizabeth Warren, testimony before the Committee on Banking, Housing and Urban Affairs, U.S. Senate, “Examining the Billing, Marketing, and Disclosure Practices of the Credit Card Industry, and Their Impact on Consumers,” January 25, 2007.

Key AARP concerns with respect to credit card practices are as follows:

***Incomprehensible disclosures.*** Anyone who has ever tried to read a credit card agreement knows that the terms are simply indecipherable and filled with language that even lawyers have trouble understanding. According to the *Wall Street Journal*, the typical credit card contract in the early 1980s was one page long. But, by the early 2000s, the contract had grown to more than 30 pages of incomprehensible text.<sup>11</sup> Compounding the problem of overly complex front-end disclosure is the fact that expansive “change-in-terms” provisions permit credit issuers to revise the key contract terms at any time and for any reason simply by sending a notice to the cardholder. Given the freedom that credit providers retain to change key terms such as interest rates, fees, and length of time to make payments, the early disclosure and contract terms are of minimal value to consumers. Finally, the monthly bills sent to cardholders do little to help facilitate consumer awareness of the impact of making just a minimum payment or the true cost of the credit.

***Penalty fees.*** It used to be that certain practices, such as exceeding a credit limit, were prohibited. But, in recent years these practices have been allowed, although cardholders are penalized for engaging in such behavior. As such, penalty fees have become primarily a revenue enhancer for credit card issuers. The United States Government Accountability Office (GAO) looked at the interest rates and fees applied to 28 popular credit cards issued by the six largest credit card issuers and found that “...typical cards today now include higher and more complex fees than they did in the past for making late payments, exceeding credit limits, and processing returned payments.” The GAO also identified several new fees that issuers have begun charging in recent years, some of which they are not required to disclose to consumers in advance. One example of such a fee is for the payment of bills by telephone, which can range from \$5 to \$15.<sup>12</sup>

A substantial number of Americans are paying these fees. Thirty-five percent of the credit card accounts from the six largest issuers that the GAO examined had at least one late fee in 2005, representing about 242 million credit cards. Thirteen percent of all accounts – or about 90 million cards – were assessed over-limit fees in 2005.<sup>13</sup> Late fees have been steadily rising over the past decade and easily can exceed monthly payments for consumers paying low minimum balances.

***Penalty interest rates.*** The majority of credit card issuers also increase interest rates for credit card account holders who pay their bills late, even by a few hours. In a survey released this year, Consumer Action found that 85 percent of issuers charged penalty rates for late payments on their cards, up from 79 percent in 2005.<sup>14</sup> The GAO found that all but one of the 28 cards from the six largest issuers it reviewed charged default rates in 2005. The average default rate was

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<sup>11</sup> Mitchell Pacelle, “Putting Pinch on Credit Card Users,” *Wall Street Journal*, July 12, 2004.

<sup>12</sup> “Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers,” U.S. Government Accountability Office, GAO-06-929, September 2006.

<sup>13</sup> *Ibid.*

<sup>14</sup> “2007 Credit Card Survey,” Consumer Action, May 2007, available at [http://www.consumer-action.org/news/articles/2007\\_credit\\_card\\_survey/](http://www.consumer-action.org/news/articles/2007_credit_card_survey/).

27.3 percent, up from 23.8 percent in 2003.<sup>15</sup> Some consumers with low-rate cards could see their interest rates double overnight for being late on one credit card payment. Some issuers also say that they will charge default interest rates for exceeding the credit limit on the card or for returned payments, or that they will increase interest rates for cash advances and balance transfers or for other violations of card terms.

**Multiple and variable interest rates.** It used to be that credit cards offered a single fixed interest rate. That is not true anymore. The GAO examination of credit card practices found that multiple interest rates are being applied to the same card for the same consumer. For example, there typically is one interest rate for cash advances, another for regular purchases, another for balance transfers, and yet another for late payers and those who exceed their credit limit.<sup>16</sup> According to the GAO, there also is a trend toward higher interest rates. For example, from 2003 to 2005, the number of accounts subject to interest rates greater than 25 percent doubled, from 5 percent to 11 percent of all accounts.<sup>17</sup>

**Universal default.** Card issuers now routinely check their cardholders' credit reports and will raise the interest rate if there has been a change in the consumer's profile, whether that is a drop in credit score, a late payment to another creditor, or assuming additional debt – even if the cardholder has never been late or missed a payment to that particular credit card issuer. The increases are triggered not just by a late mortgage or credit card payment to other lenders, but also to payment disputes with other types of creditors, such as utilities or book clubs.<sup>18</sup> In 2005, 44.7 percent of credit card issuers surveyed by Consumer Action reported having universal default policies in place.<sup>19</sup> The GAO reported that four of the six largest issuers reserve the right to impose rate increases because of behaviors related to other creditors as a change in terms, which typically requires only 15 days notice under Regulation Z of the Truth in Lending Act.<sup>20</sup> More recently, some credit issuers have told Congress that they have abandoned the practice of universal default. However, Consumer Action in its 2007 Credit Card Survey reports that the practice “appears to be alive and well and living in another section of your cardholder agreement.”<sup>21</sup>

**Mandatory arbitration.** Most credit card issuers today require their customers to resolve disputes through mandatory binding arbitration, rather than in a court of law. Indeed, Consumer

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<sup>15</sup> “Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers,” U.S. Government Accountability Office, GAO-06-929, September 2006.

<sup>16</sup> Opening statement of Senator Carol Levin, U.S. Senate Permanent Subcommittee on Investigations Hearing on Credit Card Practices: Fees, Interest and Grace Periods,” March 7, 2007, available at <http://hsgac.senate.gov/files/OPENINGLEVINwithExhibits.pdf>.

<sup>17</sup> “Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers,” U.S. Government Accountability Office, GAO-06-929, September 2006.

<sup>18</sup> Bill Burt, “Pay One Bill Late, Get Punished by Many,” *Bankrate.com*, January 20, 2004.

<sup>19</sup> “2005 Credit Card Survey,” Consumer Action, July 28, 2005, available at [http://www.consumer-action.org/downloads/english/CC\\_Issue\\_2005.pdf](http://www.consumer-action.org/downloads/english/CC_Issue_2005.pdf).

<sup>20</sup> “Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers,” U.S. Government Accountability Office, GAO-06-929, September 2006.

<sup>21</sup> “2007 Credit Card Survey,” Consumer Action, May 2007, available at [http://www.consumer-action.org/news/articles/2007\\_credit\\_card\\_survey/](http://www.consumer-action.org/news/articles/2007_credit_card_survey/).

Action's 2007 Credit Card Survey found that all of the top 10 credit card issuers require binding arbitration, often in a forum chosen by the issuer.<sup>22</sup>

### **Recommendations for Reform**

Deregulation of the credit card marketplace, in which state laws limiting interest rates and fees were nullified by two Supreme Court decisions in 1978 and 1996,<sup>23</sup> has drastically changed the way issuers market and price credit cards to consumers of all ages. It is clear that in recent years credit card companies have become far more aggressive in imposing questionable fees and interest rate practices. The result is that penalty interest rates, high and accumulating fees and interest on fees can push consumers over the financial edge. In fact, consumers in debt trouble sometimes owe as much or more in fees and penalty interest charges, as in principal. These practices contribute to the growing level of "unmanageable" debt incurred by all consumers, including older consumers.

AARP commends Congress for taking a serious look at these issues and endorses the following reforms:

***Improved disclosure of terms and conditions of the credit card.*** Clearly, the current disclosure regime does not work. Giving consumers pages and pages of small print simply is not acceptable. Consumers need more comprehensible and useful information on the front-end, at the point-of-sale, and in monthly statements. AARP recognizes the Federal Reserve's recent notice of rulemaking intended to improve credit card disclosure and will be commenting on the proposed regulations. Consumers should be given adequate advance notice of any changes in terms and conditions of the card and should be notified if a purchase will exceed their credit limit and the fees and penalties associated with such activity. Monthly billing statements clearly articulate what it means to make a minimum payment and the cost of doing so. The statement should clearly identify the type and dollar amount of all fees that are being charged and the conditions that triggered imposition of the fees. It should be pointed out that while AARP endorses efforts to improve disclosure, we caution lawmakers and regulators that better disclosure alone is no substitute for substantive regulation that outlaws abusive credit card practices that unfairly keep American families mired in debt. Improved disclosure should go hand-in-hand with more substantive regulatory improvements.

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<sup>22</sup> *Ibid.*

<sup>23</sup> Credit card deregulation began in 1978, with the Supreme Court's decision in *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.* (Marquette Nat'l Bank of Minn. v. First of Omaha Serv. Corp., 439 U.S. 299, 99 S. Ct. 540, 58 L. Ed. 2d 534 1978). his case gave national banks the green light to take the most favored lender status from their home state across state lines, and preempt the law of the borrower's home state. As a result, national banks and other depositories established their headquarters in states that eliminated or raised their usury limits. In 1996, the U.S. Supreme Court paved the way for credit card banks to increase their income stream even more dramatically. In *Smiley v. Citibank (South Dakota), N.A.*, the court approved a definition of interest that included a number of credit card charges, such as late payment, overlimit, cash advance, returned check, annual, and membership fees. As a result, national banks and other depositories can charge fees in any amount to their customers as long as their home state laws permit the fees.

***Prohibit universal default.*** Congress should prohibit punitive “universal default” interest rates based on alleged missteps with another credit issuer or other company. This practice penalizes responsible debtors and should be prohibited.

***Limits on penalty fees and interest rate hikes.*** Credit card companies should be prohibited from charging interest on debt that is paid on time, charging fees for consumers to pay their bill by phone, computer or other means, and doubling or tripling interest rates to penalize late payments or over-the-limit charges. Penalty fees and interest rates should be reasonable in relation to the cost of the default.

***Prohibit mandatory binding arbitration.*** It is AARP’s position that appropriate and adequate redress must be available to aggrieved consumers. Mandatory binding arbitration infringes on a consumer’s ability to seek redress and should be prohibited.

## **Conclusion**

The growing debt level of this nation’s older consumers is a very real and serious concern. Facing rising costs for basic necessities, older consumers often are forced to make a choice to go without or borrow to pay. Of course, many older people go without, often at serious expense to their own well being. But, for those who have chosen to rely on the “plastic” safety net, borrowing increasingly means sky-high costs and the very real prospect of endless service debt. AARP urges Congress to prohibit the abusive practices that contribute to and exacerbate the financial concerns of this nation’s seniors.